

and balance.” These mandates are not in conflict. Instead, they complement each other, and to maintain Americans’ confidence in public broadcasting the Corporation for Public Broadcasting must see that both mandates are fulfilled. Congress and the taxpayers expect nothing less.

GUANTANAMO PRISONERS

Mr. BINGAMAN. Mr. President, I rise today to express my strong disagreement with the language in the Defense appropriations and Defense authorization conference reports concerning the treatment of prisoners being held in Guantanamo Bay, Cuba.

Under the McCain amendment, U.S. personnel are prohibited from engaging in torture or cruel, inhuman, or degrading treatment. I strongly support this. This ban applies to all military and intelligence personnel regardless of where they are located throughout the world. This is a clear statement that the United States will abide by its obligation to follow the law, and it is a step forward in reinstating our Nation’s moral authority.

However, the Graham amendment would undercut much of what we are accomplishing with the McCain amendment in two respects. First, it would undercut our commitment to prohibiting the use of torture by allowing evidence produced as a result of torture to be used in military legal proceedings. Second, it would undercut any enforcement of this prohibition by barring individuals from seeking judicial review of the legality of their detention or bringing a suit to stop unlawful treatment.

When the Graham-Levin compromise passed the Senate, it had some good language in it, and it had some very troubling language.

On the good side, the amendment provided that the Combatant Status Review Tribunals at Guantanamo, which are charged with determining whether individuals should be classified as so called enemy combatants, are not allowed to use evidence that is derived through “undue coercion,” such as torture. This was an important step forward. We should not be relying on information that is inherently unreliable in deciding whether to indefinitely detain a person. Unfortunately, this provision is now gone.

In the conference report the outright prohibition on using evidence derived through torture was replaced with a mere assessment of whether the evidence has been derived through coercive means, such as torture, and whether the evidence has any probative value. I would hope that a military tribunal assessing such evidence would realize that evidence derived through torture is not reliable. However, as drafted, this bill would allow a Combatant Status Review Tribunal to use evidence derived through torture if the tribunal finds that the evidence is helpful.

To the best of my knowledge this would be the first time in U.S. history that the United States would be on record as allowing this type of evidence in any type of legal proceeding. This is wrong and a huge step backwards.

Furthermore, from a practical standpoint the assessment with regard to whether the evidence is derived through torture is essentially pointless. The conference report states that this assessment is only applicable prospectively. The problem is that of the over 500 prisoners being held at Guantanamo, every single one has already undergone a status hearing to determine whether or not they are an “enemy combatant.” Under the existing procedures, there is no exclusionary rule prohibiting the use of evidence derived through torture. Therefore, the Government may be basing its finding that some of these prisoners are “enemy combatants” on faulty evidence that is completely unreliable.

Let me provide an example of why this language is so problematic. Suppose a person is detained by the U.S. Government and handed over to a foreign intelligence service for interrogation. While U.S. personnel are prohibited from using interrogation techniques that amount to torture or cruel, inhuman, or degrading treatment, other countries use interrogation techniques, such as electric shock or pulling off a person’s fingernails, which do not comply with this standard. If a person is tortured while in the custody of one of these intelligence services, any statements that the person makes, either incriminating himself or another person, could be admissible in the Combatant Status Tribunal Review, or CSRT, process. Frankly, I, and most people, would confess to nearly anything to avoid the harshest forms of torture. We should not be permitting the use of this type of evidence in any legal proceeding.

It is inconsistent to say that we will prohibit the use of torture by our military and intelligence personnel because it is legally and morally repugnant, but we will allow evidence derived in this manner to be used in our military proceedings. “We don’t do it, but if you do it we will use it,” is hardly a position of clarity with regard to our commitment to uphold the prohibition on torture, or cruel, inhuman, or degrading treatment.

The conference report also limits the ability of a prisoner at Guantanamo to file a writ of habeas corpus. This fundamental right has its foundation in the Magna Carta and is enshrined in our Constitution. Simply, it is the right to go to court when a person is detained by the Government and ask whether or not one’s detention is justified. Contrary to how this right was characterized during debate on this bill, this is not about prisoners suing to get access to DVD movies or because they are unhappy with the type of peanut butter that they are being served—the Great Writ, as habeas is known, is meant to

provide a basic check in preventing the Executive Branch from exercising unfettered authority in imprisoning individuals without judicial review.

The fact is that mistakes happen. For example, take the recent case of the innocent German citizen who was picked up by the CIA in Macedonia and flown to a prison in Afghanistan where he was held in a secret facility for over 5 months because he was thought to be involved in terrorism—he wasn’t. We made a mistake. Judicial review is important in reducing the likelihood that we are wrongfully imprisoning people, and we should have a viable process for weeding out these mistakes.

According to news reports, commanders in Guantanamo have estimated that 70 percent of the individuals imprisoned there may be no threat at all. Whether this number is correct or not, it is reasonable to require that there be some meaningful judicial review in place to make sure that we are not indefinitely imprisoning people who pose no threat. If you are going to hold someone indefinitely for years on end without affording them a trial, I think it is fair to allow a person to challenge the basic legality of their detention.

The Graham amendment, as it passed the Senate, restricted habeas corpus.

Unfortunately, the conference report goes much further. It also prohibits a prisoner from bringing “any other action” against the Government regarding “any aspect” of their detention. This is an excessively broad restriction. It seems to eliminate all other causes of action, including the ability of a person to bring a suit to stop ongoing torture. This significantly undermines the McCain amendment. Ultimately, I have confidence that a court will hold that this provision is overly broad and unconstitutional.

In addition, it is also important to note what the conference report does not do. The language contained in the conference report limits access to U.S. courts. But the conference report does not provide an exception for people who have been found not to be a threat and have been determined to be “non-enemy combatants.”

Recently, the Washington Post has done a series of articles highlighting the plight of the ethnic Uighurs, who are Chinese Muslims opposed to the Communist government in China and who are seeking their own homeland in northwestern China. Mr. President, I ask unanimous consent that these Washington Post articles be inserted into the RECORD at the end of my statement.

The Department of Defense has been holding a group of Uighurs in Guantanamo for the last 4 years. CSRT hearings have been held for these individuals, and the Department of Defense has determined that they are “non-enemy combatants.” They are not a threat to our country and are not part of the al Qaeda terrorist organization. The problem is that despite the finding

that they are not “enemy combatants,” the Defense Department has refused to release them from Guantanamo because it can’t find a country to take them—if they are sent to China they will likely be arrested and tortured, and countries such as Saudi Arabia, where many have lived previously, won’t take them back. And the United States will not allow them to enter our country because it does not want them to apply for asylum.

In essence, we are taking away the right of a person who is being held without charge, indefinitely, to go to court and ask for their release after the Department of Defense has said that they are essentially innocent. Not only is this repugnant to our Nation’s values, it is also blatantly unconstitutional.

Mr. President, over the last several years this administration has diminished our standing in the world by backing away from our longstanding commitment to human rights and the rule of law. I look forward to the day when the United States is once again viewed as a leader in this regard.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Dec. 15, 2005]

DETAINEE CLEARED FOR RELEASE IS IN LIMBO
AT GUANTANAMO

(By Josh White and Robin Wright)

When U.S. forces freed Sadiq Ahmad Turkistani from a Taliban prison in Kandahar, Afghanistan, in late 2001, the detainee met with reporters at a news conference and told U.S. officials that he had been wrongly imprisoned for allegedly plotting to kill Osama bin Laden.

An ethnic Uighur who was born and raised in Saudi Arabia, Turkistani said he believed in the U.S. campaign against terrorism. He professed hatred for al Qaeda and the Taliban—groups he said tortured him in prison—and offered to help the United States. Intelligence officials and U.N. representatives told Turkistani they would seek to find him refuge, possibly in Pakistan, according to accounts he later gave his lawyers.

Instead, Turkistani was taken to a U.S. military base in Afghanistan, where he was stripped, bound and thrown behind bars. U.S. officials then strapped him into an airplane, fitted him with dark goggles and sent him to the U.S. detention facility at Guantanamo Bay, Cuba, in January 2002, according to U.S. lawyers who represent him.

Nearly four years later, Turkistani remains there, despite being cleared for release early this year after a government review concluded he is “no longer an enemy combatant.” It is unclear exactly when that determination was made, but Justice Department lawyers gave notice of it in an Oct. 11 court filing.

Turkistani wrote a letter to his lawyers in recent months, in which he asked about the welfare of his family, whom he has not heard from in eight years: “Now, I have been under the control of the Americans for the past three years and eight months. Six months ago, I was told by the Americans that I am innocent and I am not an enemy combatant.”

It remains a mystery why Turkistani was sent to Guantanamo Bay at all. Some officials and his lawyers speculate that he has been held by mistake. Or, they say, some officials may have believed he had intelligence value because bin Laden accused him of trying to plot his killing in 1998. U.S. officials have offered no public explanation.

Like a group of five Chinese Uighurs (pronounced wee-gurs), Turkistani remains incarcerated because the United States simply does not know what to do with him. He does not have Saudi citizenship, and U.S. officials are having trouble getting his home country to take him back. U.S. officials do not want to send him to China, where Uighurs are seeking a separate homeland, saying he is likely to be tortured.

But unlike many detainees at Guantanamo Bay, Turkistani was not captured on the battlefield, nor was he a suspected terrorist. Instead, he was swept up in the confusion that marked the early days of the U.S. war in Afghanistan, and even as a potential ally found himself with no recourse to challenge his detention.

“The crowning irony is that he is an enemy of bin Laden, who was charged with conspiring to kill him, and we hold him prisoner today,” said Sabin Willett, a lawyer who has filed a petition with the U.S. District Court in Washington on Turkistani’s behalf. “It’s heartbreaking that we throw people into jail to rot.”

Turkistani is one of nine detainees who live at Guantanamo Bay’s Camp Iguana, a less restrictive area of the prison where detainees have limited privileges including access to television and a few DVDs. Besides five Chinese Uighurs who have not been accepted by any country, there is a Russian, an Algerian and an Egyptian. All have been cleared for release but have not been given their freedom.

A former U.S. official familiar with detention operations said mistakes were made in Afghanistan, when some detainees were shipped to Cuba because space at the U.S. facility in Bagram was limited and there was no clear plan on where to house suspected enemy combatants.

“It’s possible to get stuck there if you don’t have a state,” the former official said. “Particularly at that time, when there were a lot of people getting picked up in Afghanistan, cases people were unsure about tended to end up in Cuba. People did get caught up in the situation.”

Another U.S. official familiar with Guantanamo Bay said it is likely that other “stateless” people will surface as the military prepares to release more detainees.

The Defense and State departments are working to return such people to their home countries, if possible, and have unsuccessfully tried to persuade at least 20 nations to take in the Uighurs—including Sweden, Finland, Switzerland and Turkey.

“The government is serious about finding a place for resettlement for the Uighurs and will continue diplomatic efforts to accomplish that goal,” said Lt. Col. Mark Ballesteros, a Pentagon spokesman. “The United States has made it clear that it does not expel, return or extradite individuals to other countries where it believes it is more likely than not they will be tortured.”

Turkistani is one of more than 200 Guantanamo Bay detainees who have filed habeas corpus petitions in U.S. District Court in Washington, arguing that they are being held unlawfully and asking the court to order their release.

Turkistani told his lawyers that he was deported to Afghanistan from Saudi Arabia sometime in 1997, after he was jailed for alleged possession of hashish. Turkistani said he was given fake Afghan identification and put on a plane from Jeddah to Kabul because the Saudi government did not recognize him as a citizen. He said that Afghan officials detained him for six days before releasing him.

He said he made his way to Khost, Afghanistan, and befriended an Iraqi man. Before long, he and his friend were arrested by four Arab al Qaeda members. Turkistani said he was accused of being a Saudi spy, interrogated and tortured.

Fearing for his life, after 20 days of severe beatings and sleep deprivation, Turkistani

said he ultimately gave what he called a “lengthy story” about how the Saudis had sent him there to kill bin Laden. He was turned over to the Taliban and held in Kandahar for more than four years.

Susan Baker Manning, another lawyer representing Turkistani who met with him last month, said he denies allegations that he tried to kill bin Laden and confessed only under torture. Bin Laden, however, asserted in a statement in December 1998 that Turkistani and two accomplices had been hired by Saudi Arabian officials to kill him and failed.

Foreign news reports have indicated that the attack, allegedly by poison, caused bin Laden’s kidneys to fail and netted Turkistani and his alleged accomplices hundreds of thousands of dollars.

Manning said that the government has been challenging lawyers’ efforts to represent Turkistani, and that he has become intensely frustrated by his lengthy confinement.

“It’s entirely possible that it’s just a mistake,” Manning said. “The enemy took away his life for 4½ years, and we reward him for that by taking away his life for another four years. He clearly opposed al Qaeda and the Taliban, and he still feels that way. He’s not a huge fan of the U.S. anymore.”

[From the Washington Post, Dec. 13, 2005]

COURT MAY HEAR CHINESE (UYGHUR)
DETAINEES

(By Josh White)

A federal judge in Washington said yesterday that he will consider allowing two detainees in the military prison at Guantanamo Bay, Cuba, to appear before him in court to challenge their confinement, telling lawyers that the ethnic Uighurs who have been cleared for release have been held too long.

U.S. District Judge James Robertson said he believes the case of the Uighurs (pronounced wee-gurs) presents “a genuine dilemma” because the government has determined they are not enemy combatants but has not found a country to accept them. U.S. officials are not willing to send the Uighurs—Muslims who are seeking their own homeland on what is now part of northwestern China—to their native country for fear that they would be tortured or killed.

U.S. authorities have tried to persuade nearly two dozen nations to provide refuge for the Uighurs but have refused to allow them into the United States.

No Guantanamo Bay detainee has been allowed to travel to the United States and appear before a federal judge. The government has fought efforts at judicial review after a 2004 Supreme Court ruling entitling detainees to a “competent tribunal” to determine whether they are enemy combatants. The issue is currently before the appellate court for the District of Columbia Circuit.

Government lawyers are concerned that such a move could allow the Uighurs to immediately apply for asylum when they arrive on U.S. soil.

But Sabin Willett, an attorney for the detainees, said his clients are essentially on U.S. soil already and asked the judge to consider granting them a provisional “parole” that would allow them to live with ethnic Uighurs in the Washington area while their cases are considered.

Robertson, who in August sought more time to consider the cases, said yesterday that he is frustrated by the government’s inability to move forward, essentially stranding five Uighurs who have been housed in a

part of the detention facility known as Camp Iguana, which is less restrictive than the rest of the prison. The five Uighurs are living with four others at the camp as they await a country to accept them.

The Uighur detainees have been held, without charges, for more than four years since their arrests in the Middle East.

The judge said he had three options: deny the detainees' motion and allow the case to go to an appellate court; order them to appear before him for a hearing on their immediate release; or order the government to release them outright "and see what happens, see how the government responds."

"As far as I can tell, nothing is happening," Robertson said, adding that he doesn't believe diplomatic progress has been made. "The time has stretched out to the point where indefinite is not an inappropriate word to describe what is happening."

Terry Henry, a Justice Department lawyer, said that government officials have been working on a diplomatic solution but that he could discuss it only in private. Robertson declined to hear the information off the record.

"The government is serious about finding a place for resettlement for the petitioners," Henry said.

The Uighurs, through their lawyers, have argued that because they are not a threat they should be moved to more hospitable living conditions and have asked to be released to live in the Washington area. Willett said his clients have gone from elation in August—when they were moved to Camp Iguana and given hope of release—to frustration as their cases have dragged on.

"I am deeply concerned about the human impact of the indefinite nature of this," Willett said.

Rabiya Kadeer, president of the Washington-based International Uyghur Human Rights and Democracy Foundation, attended the brief hearing yesterday and pledged to provide homes and jobs for the Uighurs should they be released to the United States.

HONORING WINTER WONDERLAND WALK FOR THE CURE DAY

Mr. LIEBERMAN. Mr. President, breast cancer is one of the most frequently diagnosed cancers in women. More than 211,240 new cases of breast cancer in women will be diagnosed in the United States in 2005. In my own State of Connecticut, more than 2,600 women are expected to be diagnosed and 530 are expected to die from breast cancer this year. Overall, it is believed that 1 in every 10 women will develop breast cancer at least once in their lifetime.

The best defense against breast cancer, is early detection. The sooner one can detect breast cancer, the better the chances that the disease can be successfully treated. It is because of this that the American Cancer Society suggests that all women age 40 and over have a mammogram annually. As important, women must learn to do regular self breast exams.

Women generally will understand their bodies better than doctors. In Connecticut, early detection from mammograms and self breast exam has helped our State achieve a 5-year survival rate, for those women diagnosed with breast cancer, of 97 percent. That is one of the highest such survival rates in the country.

As successful as my State has been, we have not been successful enough.

We must strive to increase awareness and education of breast cancer so that all women are aware of the risk it poses and the indisputable benefits of early detection. We must increase research into the relationship between environmental exposures, genetic predisposition, and breast cancer risk and also seek new drugs and tools that will allow health care professionals to better treat breast cancer patients with the goal of cure.

It is in this spirit on January 21, 2006, Eastern Mountain Sports Connecticut stores will sponsor the Winter Wonderland Walk for the Cure to benefit both breast cancer research and the Connecticut chapter of the Susan G. Women Breast Cancer Foundation, at Tarrywile Park in Danbury, CT.

Therefore, it is my pleasure to join Connecticut's Governor, M. Jodi Rell, herself a breast cancer survivor, in celebrating, in recognition of the need to increase awareness about breast cancer and the need for early detection, January 21, 2006 as Winter Wonderland Walk for the Cure Day in Danbury, CT.

HUMAN RIGHTS VIOLATIONS IN ETHIOPIA

Ms. CANTWELL. Mr. President, I rise to speak on the disturbing reports of political chaos in Ethiopia. With allegations of vote tampering and emerging pictures of large-scale human rights abuses taking place in Ethiopia, that the administration must impress upon Prime Minister Meles Zenawi and other global neighbors, that severe consequences follow actions which undermine democratic ideals.

Ethiopia held its first ever democratic elections on May 15, 2005. Revelations since then of violence and mass detention of Ethiopian citizens by the Meles government are not only alarming and disconcerting to me and the American people who have supported the country in its effort to advance the cause of democracy. It is regretful to have to witness a regress in democratization.

Roughly 90 percent of Ethiopia's populace turned out for the democratic election. Rather than a sentiment of accomplishment or progress, the mood of the country remains nihilistically somber. According to international human rights observers, increased repression of the Ethiopian people is connected to the seeming loss of power from the ruling Meles government to the opposing party, the Coalition for Unity & Democracy, CUD—has shown by early vote counts during the election. With the Meles government accused of voting irregularities, it is not surprising that the people of Ethiopia protested the unofficial election results.

Recent reports of human rights abuses in Ethiopia range from arrest and intimidation by government authorities and illegal arrests of innocent people, including ranking members of the CUD party and media representatives, to the loss of life. For example,

some 14,000 people were detained when riots ensued following the election. Among other journalists, Getachew Simie, former editor of the Amharic-language weekly, and Leykun Dngeda, former publisher of the Dagim WonchifWeekly, have been given jail sentences for covering the anti-government protests. Even Prime Minister Meles reported that 48 people were killed last month in relation to the unrest caused by the alleged fraud in the May polls.

Prime Minister Meles must fulfill his good faith commitment to human rights. With any successful transition to democracy, civil society requires the firm accountability of its government authorities. Until the Meles government brings an end to the intimidation of its people, political unrest will remain high and America's support for the democratization of Ethiopia will be muted by concern for the country's political instability.

TRIBUTE TO SENATOR EUGENE MCCARTHY OF MINNESOTA

Mr. COLEMAN. Mr. President, Minnesota and the Nation have lost a great leader and deep thinker, Senator Gene McCarthy of Minnesota. He played an import part in the history of this body and of this Nation, and we should carefully consider the lessons of his unique and deeply significant public life.

Gene McCarthy has been described as a philosopher who was a Senator. In his youth, many describe Gene as the brightest of scholars and later in his life; he was celebrated as skilled poet. In between, he was a five term Congressman and two-term Senator. His time in Washington and on the national political scene was a display of thoughtfulness, serious inquiry, and passionate pursuit of the truth. In the business of politics where there is safety in conformity, Gene McCarthy celebrated the role of the maverick. He says his role was to provoke thought and debate in our system and ensure we adhere more closely to lasting principles.

Eugene Robert McCarthy was born in the town of Watkins, in rural Meeker County, MN, on March 29, 1916. He began a life time of learning in the schools of Watkins. He graduated from St. John's University, Collegeville, MN, in 1935 with the highest GPA in the school's history. He also studied at the University of Minnesota in Minneapolis until 1939. Professionally, he was a high school teacher in Minnesota and North Dakota for 5 years and eventually became a professor of economics and education at St. John's University from 1940 to 1943 an instructor in sociology and economics at St. Thomas College, St. Paul, MN, from 1946 to 1949.

In 1944, his service to the United States began during World War II, when he was a civilian technical assistant in the Military Intelligence Division of the War Department.